Supreme Court, U.S.
FILED
MAY 20 1980
MICHAEL RODAK, JR., CLERK

MAY 29 PAGE 7

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-6290

GLEN D. DUPRIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONER

David L. Bergren
P.O. Box 7
Fort Pierre, South Dakota 57532

Attorney for Petitioner

IN THE

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GLEN D. DUPRIS,

Petitioner,

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UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
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SUPPLEMENTAL BRIEF OF PETITIONER

The purpose of this brief, which is filed pursuant to Rule 24(5) of the Rules of this Court, is to bring to the attention of the Court certain events which have transpired since the filing of the Petition for Writ of Certiorari on March 30, 1980.

On March 24, 1980, the petitioner filed a Second Petition for Rehearing with the Court of Appeals, incorporating by reference the contents of the original Petition for Rehearing which had been dismissed on January 18, 1980, and suggesting that the case be reheard en banc.[1/] On April 14, 1980, the Court of Appeals issued an order (1) recalling the previous mandate in the case, (2) vacating its dismissal of the original Petition for Rehearing, and (3) denying the Second Petition for Rehearing on the merits, over the negative vote of Judge McMillian. The mandate of the Court of Appeals was issued on April 22, 1980.

Because of the unusual circumstances involved in the disposition of the petitioner's attempts to seek a rehearing below, a more complete explanation of this sequence of events may be helpful to the Court. The initial Petition for Rehearing with Suggestion that Rehearing be En Banc was filed by the petitioner on December 20, 1979, following the grant of an extension of time. On December 28, 1979, counsel for the Cheyenne River Sioux Tribe, which acted as amicus curiae in the proceedings below, forwarded to the Court of Appeals copies of letters addressed to counsel for the petitioner and purportedly from the petitioner and his sister, which indicated a reluctance on the part of the petitioner to proceed further in his appeal efforts.[2/] A copy of the petitioner's correspondence was also forwarded to the Court of Appeals by the Department of Justice on January 2, 1980. Subsequently, on January 18, 1980, the Court of Appeals, apparently treating the correspondence described above as an "application of the appellee acting pro se", dismissed the Petition for Rehearing with prejudice. The petitioner's Motion to Vacate the Dismissal Order was denied on February 11, 1980.

Following these proceedings, the petitioner requested a hearing in the District Court to determine certain questions relating to the circumstances surrounding the preparation of the correspondence which resulted in the dismissal of his Petition for Rehearing. This hearing was held on March 17, 1980.

1/ A copy of this petition was sent to this Court by counsel for petitioner on March 25, 1980. A copy is also attached hereto as Appendix A.

2/ Copies of these and other relevant documents are attached to the Second Petition for Rehearing which is appended hereto as Appendix A.

By order dated March 20, 1980, the District Court found, inter alia, that certain administrative officials of the Cheyenne River Sioux Tribe had requested that the petitioner, who is a juvenile, discontinue his appeal efforts, that the letter in question had been prepared by others for petitioner's signature, and that the petitioner believed that his physical safety would be endangered if he did not discontinue his appeal efforts. The court consequently held that the petitioner's rights had been interfered with and that his signing of the letter in question had not been voluntary. On the basis of these determinations, the petitioner filed the Second Petition for Rehearing referred to above, which was denied on April 14, 1980.

Respectfully submitted,

David L. Bergren by DWS

David L. Bergren
P.O. Box 7
Fort Pierre, South Dakota 57532

Attorney for Petitioner

AFFIDAVIT OF SERVICE

I hereby certify that the foregoing Supplemental Brief of Petitioner was served this 19th day of May, 1980, by United States Mail, first-class postage prepaid, addressed to the Honorable Wade H. McCree, Jr., Solicitor General of the United States, Department of Justice, Washington, D.C. 20530.

William W. Shakely

Subscribed and sworn to before me this 19th day of May, 1980.

Notary Public

My Commission Expires June 30, 1985

IN THE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 78-1575

UNITED STATES OF AMERICA,

Appellant,

v.

GLEN D. DUPRIS,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
HONORABLE ANDREW W. BOGUE

SECOND
PETITION FOR REHEARING WITH SUGGESTION
THAT REHEARING BE EN BANC

David L. Bergren
Bergren and Duffy
P.O. Box 7
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(605- 223-2527

Attorney for Appellee

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Suite 607
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(202) 467-5712

Attorneys for the Counties
of Dewey, Ziebach, and Corson,
South Dakota, and the County
of Sioux, North Dakota, as
Amici Curiae.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 78-1575

UNITED STATES OF AMERICA,

Appellant,

v.

GLEN D. DUPRIS,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
HONORABLE ANDREW W. BOGUE

SECOND
PETITION FOR REHEARING WITH SUGGESTION
THAT REHEARING BE EN BANC

The Appellee, Glen D. Dupris, respectfully petitions this Court to grant a rehearing with respect to its decision of November 27, 1979, in the instant case, and to withdraw its order of January 18, 1980, dismissing appellee's first petition for rehearing with prejudice. With respect to the petition for rehearing on the decision of November 17, 1979, appellee hereby incorporates by reference all of the arguments and authorities cited in the first petition for rehearing and respectfully requests the Court to review the first petition in that regard.

With respect to the order of January 18, 1980, acting upon a purported application of the appellee, pro se, appellee urges that based upon the new evidence presented herein, Glen Dupris does not wish the appeal dismissed, and requests that this Court continue with its consideration of the matter. As foundation for appellee's contention, reference is made to the affidavit of Lyle Dupris, father of Glen D. Dupris, a juvenile, and the affidavit of Glen D. Dupris; both affidavits filed of record in the Office of the Clerk for the District of South Dakota, Central Division, and to the Findings of Fact, Conclusions of Law, and Order that was entered by the Court subsequent to a hearing on motion of the defendant, a copy of which motion and supporting affidavits is also appended hereto and incorporated herein by reference.

ARGUMENT

THE PURPORTED APPLICATION FOR DISMISSAL OF THE APPEAL BY JUVENILE GLEN D. DUPRIS ACTING PRO SE DID NOT REPRESENT THE DESIRES AND WISHES OF THE APPELLEE.

The record in the lower court established at the time of the hearing that appellee and his father were informed by one Mike Claymore that the Tribe did not wish his appeal continued. This was done upon summoning the boy and his father to the tribal administration building and the conference was held in Mr. Claymore's office. Further, peer group pressure was also apparent in a statement made by defendant on the stand that he might be "snuffed" or shot in the head for proceeding with his appeal. Testimony at the hearing also indicated his sister and others had encouraged him to dismiss the appeal, partly because they did not understand the

posture of the case with respect to defendant's exposure to conviction if the appeal failed. Finally, Junior Provo, tribal member and a part of the trial administration, typed the letter dated December 12, 1979, and addressed to David L. Bergren, appellee's court-appointed counsel, and told the defendant to sign it and have his father sign it. Both the defendant and his parents stated that the letter did not express their wishes and that the defendant wished his case to be continued. The trial court also found that the defendant did not have the legal capacity to file pleadings, and that his purported actions were not free, voluntary, or intelligently done. The Court found that other persons had interfered with the rights of defendant.

CONCLUSION

The Court's order of January 18, 1980, dismissing the petition for rehearing with prejudice should be withdrawn and reconsidered on the basis of the new evidence showing that the purported application of the appellee, pro se, was not in fact the free, voluntary, and intelligent act of the defendant, but was in fact, the result of duress and interference with appellee's statutory and constitutional rights. The petition for rehearing should be granted for all of the reasons and arguments set forth in appellee's first

petition for rehearing, filed of record herein.

Dated this 19th day of March, 1980.

Respectfully submitted,

David L. Bergren

David L. Bergren
Bergren & Duffy
P. O. Box 7
Fort Pierre, South Dakota 57532
(605) 223-2527

Attorney for Appellee

Tom D. Tobin
Tobin Law Offices
422 Main Street
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(202) 467-5712

Attorneys for the Counties of
Dewey, Ziebach, and Corson,
South Dakota, and the County
of Sioux, North Dakota, as
Amici Curiae.

CERTIFICATE OF SERVICE

I, David L. Bergren, hereby certify that a copy of the foregoing Second Petition for Rehearing with Suggestion That Rehearing be En Banc was mialed, first-class postage prepaid, to the following counsel of record, on this 21st day of March, 1980:

Terry L. Pechota, Esquire
United States Attorney
231 Federal Building
400 South Phillips
Sioux Falls, South Dakota 57102

Carl Strass, Esquire
Attorney, Appellate Section
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

David L. Bergren
David L. Bergren
Attorney for Appellee

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

* *

UNITED STATES OF AMERICA, Plaintiff,	)	CR 77-30056-01
-vs-	)	MOTION
GLEN D. DUPRIS, Defendant.	)	

* *

Comes now Defendant, Glen D. Dupris, by and through his attorney, David L. Bergren, and moves the Court prior to trial for a determination of the following issues:

1. Whether the purported dismissal of the appeal herein was the free, voluntary and intelligent act of the Defendant herein.

2. Whether the Defendant herein has the legal capacity to file binding pleadings in this matter.

3. Whether or not other parties or individuals interferred with the rights of this juvenile defendant.

4. Whether or not present counsel should continue as attorney for Defendant in this matter. —

Dated this 10th day of March, 1980.

/s/ David L. Bergren
David L. Bergren
Attorney for Defendant
P. O. Box 7
Fort Pierre, South Dakota 57532

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

* *

UNITED STATES OF AMERICA, Plaintiff,	)	CR 77-30056-01
-vs-	)	AFFIDAVIT
GLEN D. DUPRIS, Defendant.	)	

* *

State of South Dakota)
: ss.
County of Stanley)

Comes now your affiant, David L. Bergren, and states to the Court:

That he is the attorney for Defendant herein, who is a juvenile charged with a burglary on the Cheyenne River Reservation;

That by way of motion, Defendant moved to dismiss the action for lack of jurisdiction, which motion was granted by Judge Bogue;

That the matter was appealed by the government, and the Eighth Circuit by decision filed of record November 27, 1979, Judge Bogue was reversed and the matter remanded. Preliminary to appealing the matter to the Supreme Court, Defendant requested a rehearing. The Petition was denied with prejudice, based upon the correspondence of the Defendant, copies of which are attached hereto and made a part hereof by reference. Copies of correspondence by unrelated counsel are also included as exhibits.

Your affiant as trial counsel/believes that as a juvenile the Defendant herein has been unduly influenced by others with respect to his position. Affiant's last personal contact with the Defendant revealed that he wished to avail himself of all possible legal defenses. I do not believe that Defendant is legally able to bind himself with respect to his position, and feel that if this matter is tried and the Defendant decides that he wishes to challenge jurisdiction again, another round of litigation will result. Affiant further feels that persons not connected with the Court have attempted to influence the Defendant with respect to his provision solely because the Cheyenne River Sioux Tribe stands

to lose a large number of acres from the Reservation if jurisdiction is not upheld;

Affiant believes that these people talked to the Defendant, without presence of court-appointed counsel, and that such interferrence is in contempt of this Court;

Finally, present counsel for Defendant is convinced that the jurisdiction argument is meritorious, in that the Defendant is being unfairly taken advantage of by persons wishing to protect the Tribe's interest in this matter of jurisdiction. That for this reason, Affiant believes that before any further proceedings are had, the Court grant a hearing for full inquiry into the validity of the purported actions of the Defendant and desires with respect to present defense counsel and for such further determinations as the Court deems necessary to insure an orderly and just proceeding.

Dated this 10th day of March, 1980.

/s/ David L. Bergren
David L. Bergren
Attorney for Defendant
P. O. Box 7
Fort Pierre, SD 57532

Subscribed and sworn to before me this 10th day of March, 1980.

/s/ Karen K. Gertonson
My Commission Expires: 7/30/82 Karen K. Gertonson, Notary Public

(SEAL)

BERGREN AND DUFFY
Attorneys at Law
P.O. Box 7
FT. PIERRE, S. D. 57532

January 21, 1980

Robert D. St. Vrain, Clerk
U.S. Court of Appeals for
the Eighth Circuit
St. Louis, MO 63101

RE: U.S. vs. Glen D. Dupris
No. 78-1575

Dear Mr. St. Vrain:

This will acknowledge receipt of a notification dated January 18, 1980, that the petition for rehearing in the above matter is dismissed with prejudice, upon application of the appelle acting pro se. I have several questions in this regard and would ask you for clarification.

First of all, I am enclosing the sole correspondence with respect to this matter. I am also enclosing my response to Mr. Dupris. As you can see, the letter of December 10th indicates a belief that the young boy has already been sentenced by the Federal Court. I am afraid there has been a great deal of pressure brought to bear by the Tribe or other persons, as the young man has never personally indicated to me anything that a desire to defend himself as best he is able.

I wish to know whether the Court has discharged me as attorney for Glen Dupris. If so, I would like the reasons to be stated of record. I think it is only fair to me that the record reflect the "cause" for which I was fired. Secondly, it is my understanding that I still represent the boy at the trial-court level, and we will now proceed to trial on the merits. Am I precluded from any further appeal proceedings with respect to this defendant?

I believe the thing that bothers me most about the handling of this matter is that I feel there are interests here, particularly the Tribes, which are contrary to what might be in the best interest of this young man, let alone what the young man might personally feel. I am surprised that the correspondence was accepted as an application for dismissal, without even assertaining the validity of signatures, let alone the personal feelings of defendant. Certainly, the question of jurisdiction is a legitimate question which I felt ethically bound to raise. I feel that under the circumstances there should have been inquiry into the bona fides

of the correspondence I received. Also, I am wondering if I am discharged from any responsibility from determining whether the Tribe's actions in this matter might constitute a violation of the juvenile's rights, for instance under 46 U.S.C. 1983.

I have tried to act in the best interests of Mr. Dupris throughout this matter, and I would therefore appreciate a clarification from the Court as to exactly what my status is and where my responsiblities end.

Thank you for your kind cooperation.

Very truly yours,

DAVID L. BERGREN

DLB/kkg

cc: The Honorable Andrew W. Bogue

BERGREN AND DUFFY
Attorneys at Law
P.O. Box 7
FT. PIERRE, S. D. 57532

December 21, 1979

Mr. Glen D. Dupris
Box 121
Eagle Butte, SD 57625

RE: U.S. vs. Dupris
Our File No. 5524

Dear Glen:

This will acknowledge receipt of your letter of December 12, 1979. Please be advised that any actions that have been taken with respect to your case have involved matters of law pertaining to your defense. Please also be advised that I was appointed by Judge Bogue to represent you in this matter and I am following my duty in that regard. There is a significant issue to be resolved as to the jurisdiction of the Court.

If you do not feel that I am properly representing you in this matter, I would suggest that you convey that communication to Judge Bogue. I presume he will take any steps he feels necessary in this matter.

Very truly yours,

DAVID L. BERGREN

DLB/deh

cc: Judge Bogue
Lyle Dupris

December 10, 1979

Mr. Dave Bergman, Counselor
Post Office Box 7
Fort Pierre, South Dakota 57532

RE: United States of America vs. Glenn Dupris

Dear Mr. Bergman:

This is in reference to the above entitled case. I have discussed this case at length with my brother, Glenn Dupris and my parents. I have advised them that you have misrepresented Glenn in trying to have this case heard within the jurisdiction of the State of South Dakota. This you have pursued after Glenn had received a fair sentence from the Federal Court of South Dakota.

Therefore, Mr. Bergman, on behalf of my brother Glenn and my parents we feel that your services are no longer effective, nor are they desired. If Glenn's case is to proceed we shall find other counsel.

Please forward pertinent information to Glenn Dupris and my parents. Thank you.

Sincerely,

Brenda Lee

cc: Judge Bogg
Melvin Garreau, Tribal Chairman
Cheyenne River Sioux Tribe

December 12, 1979

Mr. David L. Bergren
Bergren & Duffy
P.O. Box 7
Fort Pierre, S.D. 57532

Dear Mr. Bergren:

I received a copy of your letter dated November 29, 1979 to the clerk of the United States Court of appeals requesting an extension of ten days in which to file a Petition for Rehearing on my Case (U.S. Vs. Glen D. Dupris #78-1575). After careful thought on my part, I have decided to take the following course of action:

1. There will be no review or rehearing at any level of the present Appeals' Court decision on my Case.
2. I don't want the State of South Dakota to have any involvement in my Case.
3. If you are unwilling to follow this course then I will seek the counsel of another lawyer.

Thank you for your help.

Sincerely,

Glen Dupris
Glen D. Dupris
Eagle Butte, South Dakota 57625

Concur:

Lyle Dupris (Father)

C.C: Chairman-Cheyenne River Sioux Tribe

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

January 2, 1980

PRS
90-6-5-5

Mr. Robert St. Vrain
Clerk
United States Court of Appeals
Eighth Circuit
1114 Market Street
St. Louis, Missouri 63101

Dear Mr. St. Vrain:

Re: United States v. Glen Dupris,
No. 78-1575

On November 27, 1979, the Court of Appeals issued its decision in the above-entitled case. Counsel for Glen D. Dupris then mailed a petition for rehearing in this case to the Court on December 20, 1979.

Although the Federal Rules of Appellate Procedure do not permit a response to a petition for rehearing unless one is requested, the following may be of interest to the Court in determining whether that petition is properly filed. Enclosed is a copy of a letter from the appellee, Glen D. Dupris, to his attorney, dated December 12, 1979, in which Mr. Dupris has apparently instructed his attorney not to file a petition for rehearing in this case.

Earlier this week, Mr. Dupris' counsel, David L. Bergren, and I discussed this matter. Mr. Bergren informed me that since he had been appointed to represent Mr. Dupris by the federal district court, it was his view that only the federal district court could discharge him from his obligation. Accordingly, he very properly provided a copy of the letter from Mr. Dupris to the Honorable Andrew Bogue, Judge, United States District Court for the District of South Dakota.

It may be that Judge Bogue now has this matter under consideration; however, it is also possible that the matter is being held in abeyance pending some decision by this Court. Accordingly, I would respectfully suggest that the

appellate panel in this case may wish to examine the correspondence between Mr. Dupris and his counsel before taking any action on the petition for rehearing.

Thank you very much.

Sincerely,

Peter R. Steenland, Jr.
Chief, Appellate Section
Land and Natural Resources Division

cc: Honorable Andrew Bogue
United States District Judge
District of South Dakota
Federal Building and U.S. Courthouse
515 Ninth Street
Rapid City, South Dakota 57701

David L. Bergren, Esquire
Bergren & Duffy
Post Office Box 7
Fort Pierre, South Dakota 57532

Tom D. Tobin, Esquire
422 Main Street
Winner, South Dakota 57580

William W. Shakely, Esquire
Tobin Law Offices
Suite 607
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Richard West, Jr., Esquire
Suite 1000, Watergate 600
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

December 12, 1979

Mr. David L. Bergren
Bergren & Duffy
P.O. Box 7
Fort Pierre, S.D. 57532

Dear Mr. Bergren:

I received a copy of your letter dated November 29, 1979 to the clerk of the United States Court of appeals requesting an extension of ten days in which to file a Petition for Rehearing on my Case (U.S. Vs. Glen D. Dupris #78-1575). After careful thought on my part, I have decided to take the following course of action:

1. There will be no review or rehearing at any level of the present Appeals' Court decision on my Case.

2. I don't want the State of South Dakota to have any involvement in my Case.

3. If you are unwilling to follow this course then I will seek the counsel of another lawyer.

Thank you for your help.

Sincerely,

Glen D. Dupris
Eagle Butte, South Dakota 57625

Concur:

Lyle Dupris (Father)

C.C: Chairman-Cheyenne River Sioux Tribe

BERGREN AND DUFFY
Attorneys at Law
P.O. Box 7
FT. PIERRE, S. D. 57532

January 3, 1980

The Honorable Andrew W. Bogue
Federal District Judge
Federal District Court
Federal Building
515 Ninth Street
Rapid City, SD 57701

RE: U.S. v. Dupris
No. 78-1575

Dear Judge Bogue:

Enclosed please find a copy of the letter I received addressed to the Eighth Circuit Court of Appeals. I am generally not bothered by the reactions of other persons who care to express opinions about my representation of my clients. However, it appears that I have a situation where an attorney is suggesting actions taken in defense of my client are "inappropriate" and requesting an investigation. This upsets me greatly, but as I am unsure how to proceed I thought I would at least bring it to your attention.

It is apparent that a great deal of pressure is being brought to bear upon the young boy I represent. He has a valid legal defense to assert on the issue of jurisdiction. I feel it is my duty to assert that defense. I resent the attempted interference into my relationship with my client, as I feel it breaches the integrity of the judicial process. I feel that intimidation of a party defendant certainly should stand on a par with intimidation of witnesses or other obstructive actions. Particularly with respect to a juvenile.

I apologize for burdening you with my comments. I did wish to bring this matter to your attention however.

Very truly yours,

DAVID L. BERGREN

DLB/deh

Encs.

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN
SUITE 1000
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20037

(202) 342-3500
CABLE "STERIC WASHINGTON"
TELEX 892406

FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON

WRITER'S DIRECT NUMBER IS
342-3627

December 28, 1979

Mr. Robert C. Tucker
Clerk, United States Court of Appeals
for the Eighth Circuit
U.S. Court and Custom House
1114 Market Street
St. Louis, Missouri 63101

Re: United States v. DuPris
No. 78-1575

Dear Mr. Tucker:

Earlier this week I received in the mail a copy of defendant's Petition for Rehearing with Suggestion that Rehearing be En Banc in the above-captioned case. In light of the enclosed copies of correspondence which I had received previously from the Chairman of the Cheyenne River Sioux Tribe, which is our client and an amicus curiae in the DuPris litigation, I was somewhat surprised by the arrival of defendant's Petition.

As you can see, in correspondence dated December 12, 1979, and concurred in by his father, defendant DuPris explicitly directed his attorney not to seek a further review or rehearing in the Eighth Circuit concerning his case. Assuming the authenticity of Mr. DuPris' letter, which I have no occasion to doubt, Mr. Bergren's filing of the Petition is entirely inappropriate. I would respectfully urge, therefore,

that the foregoing be brought to the Court's attention, and that the matter be investigated prior to any action on the Petition.

Sincerely yours,

W. Richard West, Jr.

Enclosure

cc: David L. Bergren
Bergren and Duffy
P.O. Box 7
Fort Pierre, South Dakota 57532

Tom D. Tobin
Tobin Law Offices
422 Main Street
Winner, South Dakota 57580

William W. Shakely
Tobin Law Offices
Suite 607
1150 17th St, NW
Washington, D.C. 20036

Terry L. Pechota, Esquire
United States Attorney
231 Federal Building
400 South Phillips
Sioux Falls, South Dakota 57102

Carl Strass, Esquire
Attorney, Appellate Section
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Melvin Garreau

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

* *

UNITED STATES OF AMERICA, Plaintiff,	)	CR 77-30056-01
-vs-	)	O R D E R
GLEN D. DUPRIS, Defendant.	)	

* *

A hearing having been held on March 17, 1980, counsel for the United States and the Defendant being present, and the Court having heard all of the evidence and testimony adduced, and having entered its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that David L. Bergren, court-appointed attorney for Glen Dupris, continue to represent the Defendant and proceed to pursue all remedies and defenses available to Glen Dupris.

Dated this 20th day of March, 1980.

BY THE COURT:

/s/ Andrew W. Bogue
Andrew W. Bogue, Judge
Federal District Court

ATTEST:

/s/ William J. Srstka
William J. Srstka, Clerk.

BY: _____
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

* *

UNITED STATES OF AMERICA, Plaintiff,	)	CR 77-30056-01
-vs-	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
GLEN D. DUPRIS, Defendant.	)	

* *

A hearing having been held on the 17th day of March, 1980, in the Federal Courtroom in Rapid City, South Dakota, Defendant and his parents and court-appointed counsel, David L. Bergren, being present, and Assistant United States Attorney, Shelly Stump, appearing in behalf of the United States of America, and the Court having heard the testimony of the Defendant and his parents and other witnesses, and having read and filed the affidavits and exhibits, and based upon all of the files and records herein, good cause shown therefore, the Court makes the following:

FINDINGS OF FACT

I

That Glen Dupris is a juvenile, presently age 16, and was 13 years of age at the time he was indicted.

II

That the youngster has felt pressure from his peers, tribal members, to the point he feels that his physical safety is endangered by the litigation of the issues connected with his case.

III

That Glen Dupris and his father, Lyle Dupris, were summoned to the tribal office building, to the office of Mike Claymore, where they were informed that the Tribe desired that the youngster stop appealing his case, and that the appeal was not in the best interest of the Tribe. Some suggestion was made at that time about the Tribe furnishing a lawyer for Glen.

IV

That a tribal member associated with tribal government named Junior Provo typed a letter dated December 12, 1979, and addressed to David L. Bergren, Mr. Dupris' attorney; that the letter was not done at the direction of the juvenile, nor was it with his consent; that Junior Provo told Glen Dupris to sign the letter and have his dad sign it; the letter purported to stop or dismiss the progress of the appeal in his case.

V

Because of the pressure, Glen Dupris signed the letter referred to above, and his father signed it because of the request of the juvenile. The father did not understand the letter.

VI

Glen Dupris and his father disavow and disclaim the letter dated December 12, 1979; both desire the appeal to be continued and all defenses possible be asserted in behalf of the juvenile.

VII

That the actions of Junior Provo and other individuals constitute an interference with the rights accorded Glen Dupris under the United States Constitution and laws of the United States.

VIII

That the purported dismissal of the appeal was not a free, voluntary and intelligent act of the Defendant, Glen Dupris.

IX

The Defendant, Glen Dupris, does not have the legal capacity to file binding pleadings in this matter.

X

That David L. Bergren should continue as attorney for the Defendant in this matter and pursue all remedies in his defense.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I

That the purported dismissal of the appeal herein by Glen Dupris was not a free, voluntary and intelligent act.

II

That the Defendant has not the legal capacity to file binding pleadings in his own behalf.

III

That Junior Provo and other individuals interfered with the rights of this Defendant.

IV

That David L. Bergren should continue as court-appointed attorney for Defendant.

Dated this 20th day of March, 1980.

BY THE COURT:

/s/ Andrew W. Bogue
Andrew W. Bogue, Judge
Federal District Court

ATTEST:

/s/ William J. Srstka
William J. Srstka, Clerk.

BY: _____
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. GLEN D. DUPRIS, Defendant.	) CR 77-30056-01	AFFIDAVIT

State of South Dakota)
: ss.
County of Stanley)

Comes now your affiant Glen Dupris and states and alleges:

That he is Sixteen (16) years old and has been charged by Indictment with commission of a burglary and larceny on the Cheyenne River Indian Reservation;

That David L. Bergren, his court-appointed attorney, made certain motions in his defense challenging the jurisdiction of the Court; That these motions were granted in the Trial Court by Judge Bogue and the Government appealed to the Eighth Circuit Court of Appeals; That during the motions at the Trial Court level and on appeal, the Cheyenne River Sioux Tribe intervened because it had an interest in the question of the jurisdiction over the lands in question;

That after the appeal was taken your affiant and his father, Lyle Dupris, were called to the tribal office of the Cheyenne River Sioux Tribe and there Mike Claymore, a member of the Cheyenne River Sioux Tribe administration had a conference with affiant and his father; That although your affiant does not remember the exact conversation, the import was that Mike Claymore spoke for Melvin Garreau, the tribal chairman, and a Mr. Triosie, the tribal lawyer and he informed affiant and his father that the Tribe did not want the case to go any further; He further said that the Tribe would see to it that another lawyer was furnished to represent affiant and he said that he had discussed the matter with Melvin Garreau, the tribal chairman, and the tribal attorney Triosie;

Further, your affiant was contacted by one Junior Provo who is also in the tribal administration, who also told him that the Tribe did not want him proceeding with his case; Mr. Provo then drafted a letter dated December 12, 1979, and addressed to my lawyer Mr. Bergren, and told me to sign it and to take it home and tell my father to sign it; because of the above pressures, I did as I was told; I signed the document and I took it home and told my father to sign it; he did not understand what it was but he signed it because I asked him to.

At the time that I talked to all of these people, I did not have any advice from my lawyer, and I was led to believe that he was doing me wrong and the Tribe wrong; since I have had the matter explained to me, I now understand that this question is necessary to my defense and I wish to explore every possible defense that I have; For this reason I wish to expressly deny any and all of the statements made in the letter of December 12, 1979, a copy of which is attached to this Affidavit; and further state that I signed it only because I felt I was being pressured to drop the case and I felt there would be bad repercussions in feelings against me if I did not do so.

I wish Mr. Bergren to continue to represent me and to continue to seek to have the question of jurisdiction and all of the other related matters resolved. All of the people who talked to me did so without my invitation or request. I feel that they have interferred in my case and I oppose their actions. I wish to defend myself to the best of my ability with the assistance of Mr. Bergren. I specifically withdraw any request to terminate the appeal process, and ask that the Eighth Circuit Court of Appeals reinstate the appeal because I do not wish my appeal withdrawn; I did not voluntarily choose to withdraw my appeal and I want to continue with my appeal at this time. I disavow anyones actions supposedly taken in my behalf; I am represented only by Mr. Bergren and no one else speaks for me and I have authorized no one to request withdrawal of my appeal. I do not want it dismissed.

Dated this 12th day of March, 1980.

/s/ Glen D. Dupris
Glen D. Dupris

Subscribed and sworn to before me this 12th day of March, 1980

(SEAL)

My Commission Expires: 6-17-84

/s/ David L. Bergren
Notary Public

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

* *

UNITED STATES OF AMERICA, Plaintiff, vs. GLEN D. DUPRIS, Defendant.	)	CR 77-30056-01 AFFIDAVIT

* *

State of South Dakota)
: ss.
County of Stanley)

Comes now your affiant Lyle Dupris and states and alleges:

That he is the father of Glen Dupris and makes this Affidavit at the request of his son and his attorney Mr. Bergren to inform the Court as to the question of continuing with Glen's appeal;

That after Mr. Bergren began representing Glen, Glen and myself were called to the tribal office by Mike Claymore and we had a talk with him there; That the jist of the conversation was that the Tribe did not want the case to go any further and Mr. Claymore said that he had discussed the matter with Melvin Garreau the tribal chairman and Mr. Triosi the tribal attorney; He also implied that the Tribe would furnish a lawyer for Glen; after that, Glen came home with a letter that was typed up by Junior Provo which Glen had signed, and he asked me to sign it too. I signed the letter, but I didn't know what it was, and I did not wish for Glen to stop defending himself.

I do not wish tribal politics to be involved in this case, as I am not a political person; I wish my son to be represented by Mr. Bergren and I believe he is doing what he can to defend my boy; I further believe that my boy should be represented and the matter of the jurisdiction be decided, and I am in agreement that the matter should be handled by the appeals court; I know that Glen was under great pressure to dismiss the case and I am sure that is the reason that he signed the paper December 12, 1979, which was sent to Mr. Bergren; I join with my son in requesting that the appeal be

continued, and I know that my boy has always wanted to have his case defended in the best way possible; I also know that Glen talked to a Mr. Springer, who is a lay tribal lawyer, who also advised him that his case was wrong and that it should be dropped. Glen did not contact Mr. Bergren, and he probably should have done so before signing these papers. We wish Mr. Bergren to continue on the case and to defend Glen.

Dated this 17th day of March, 1980.

/s/ Lyle Dupris
Lyle Dupris

Subscribed and sworn to before me this 17th day of March, 1980.

My Commission Expires: 6-17-84

/s/ David L. Bergren
Notary Public

(SEAL)